IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 40 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

SABARKANTHA DIST CO OP MILK PRODUCERS UNION LTD

Appearance:

MR BB NAIK for MR RP BHATT for Petitioner

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 20/06/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

At the instance of the revenue, the following question has been referred to this court for its opinion by the Income Tax Appellate Tribunal, Ahmedabad Bench 'A' under the provisions of sec. 256(1) of the Income-tax Act, 1961:

"Whether the Appellate Tribunal has not erred in law and on facts in holding that the claim of deduction under section 80P of the Income-tax Act, 1961 for an amount of Rs. 1,62,703/- being income from interest and dividend from co-operative bank and co-operative society is required to be considered before carry forward unabsorbed depreciation is set off?"

2. Learned advocate Shri B.B. Naik has appeared for the applicant whereas, though served, nobody has appeared for the respondent assessee.

3. It has been submitted by learned advocate Shri Naik that the Tribunal had relied upon its order passed in case of the same respondent assessee for the Assessment Years 1976-77 and 1977-78 while deciding the issue before it. It has been further submitted by the learned advocate that in case of the assessee for the earlier years in respect of which the Tribunal had decided the issue in favour of the assessee, in I.T.R. No. 222/84 this Court had decided similar issue in the negative i.e. in favour of the revenue and against the assessee.

4. In view of the said fact, we answer the question in the negative i.e. against the assessee and in favour of the revenue.

The reference stands disposed of accordingly with no order as to costs.

(A.R. Dave, J.)

(D.A. Mehta, J.)

(hn)